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UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

YI-CHI SHIH,  
aka "Yichi Shih,"  
aka "Yuqi Shi," et al,

Defendants.

No. CR 18-50(B)-JAK

GOVERNMENT'S MOTION IN LIMINE NO. 3 TO ADMIT CERTIFIED AND SELF-AUTHENTICATING BUSINESS AND GOVERNMENT RECORDS AT TRIAL

Hearing Date: April 4, 2019  
Hearing Time: 8:30 a.m.  
Location: Courtroom of the  
Hon. John A.  
Kronstadt

Plaintiff United States of America, by and through its counsel  
of record, the United States Attorney for the Central District of

1 California and Assistant United States Attorneys Judith A. Heinz,  
2 James C. Hughes, Melanie Sartoris, William M. Rollins, and Khaldoun  
3 Shobaki, hereby brings its motion in limine no. 3 to admit certified,  
4 self-authenticating business and government records at trial.

5 This motion is based upon the attached memorandum of points and  
6 authorities, the files and records in this case, and such further  
7 evidence and argument as the Court may permit.

8 Dated: March 4, 2019

Respectfully submitted,

9 NICOLA T. HANNA  
United States Attorney

10 PATRICK R. FITZGERALD  
11 Assistant United States Attorney  
12 Chief, National Security Division

13 /s/  
14 JUDITH A. HEINZ  
15 JAMES C. HUGHES  
16 MELANIE SARTORIS  
WILLIAM M. ROLLINS  
KHALDOUN SHOBAKI  
Assistant United States Attorney

17 Attorneys for Plaintiff  
18 UNITED STATES OF AMERICA  
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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Defendant YI-CHI SHIH ("defendant") is accused of knowingly and willfully conspiring to export military-grade circuits from the United States to the People's Republic of China ("PRC"). At defendant's May 7, 2019 trial, the government intends to introduce certain business and government records under the self-authenticating provisions of the Federal Rules of Evidence. The government provided written notice to defendant of its intent to introduce such records in this manner on December 6, 2018, December 11, 2018, and December 21, 2018. (Dkts. 275, 279, Ex. A.) To date, defendant has not advised the government of any intent to challenge the government's offer of these records into evidence.

**II. ARGUMENT**

**A. Self-Authenticating Business Records**

Rule 902(11) permits the admission of self-authenticating business records. Specifically, the Rule dictates that certified domestic records of a regularly conducted activity "are self-authenticating" and therefore "require no extrinsic evidence of authenticity in order to be admitted." Fed. R. Evid. 902(11). To qualify under this provision, the records in question must be "[t]he original or a copy of a domestic record that meets the requirements of Rule 803(6)(A)-(C), as shown by a certification of the custodian or another qualified person." Id. The Rule also requires that the proponent of such evidence provide an adverse party, prior to trial, with "reasonable written notice of the intent to offer the record -- and . . . make the record and certification available for inspection -- so that the party has a fair opportunity to challenge them." Id.

1 Under Rule 803(6)(A)-(C), a business record is admissible if:  
2 (A) "the record was made at or near the time by -- or from  
3 information transmitted by -- someone with knowledge"; (B) "the  
4 record was kept in the course of a regularly conducted activity of a  
5 business, organization, occupation, or calling, whether or not for  
6 profit"; and (C) making the record was a regular practice of the  
7 activity." Fed. R. Evid. 806(A)-(C). Moreover, admitting business  
8 records under Rule 902(11) without testimony from a custodian of  
9 records does not violate a defendant's rights to confront witnesses  
10 because business records are not testimonial in nature. See  
11 Bullcoming v. New Mexico, 564 U.S. 647, 659 n.6 (2011) ("Elaborating  
12 on the purpose for which a 'testimonial report' is created, we  
13 observed in [Melendez-Diaz v. Massachusetts, 557 U.S. 305 (2009)]  
14 that business and public records 'are generally admissible absent  
15 confrontation . . . because -- having been created for the  
16 administration of an entity's affairs and not for the purpose of  
17 establishing or proving some fact at trial -- they are not  
18 testimonial.'" (quoting Melendez-Diaz, 557 U.S. at 324)).

19 Here, the government has produced business records from the  
20 custodians of records (or other qualified persons) of various  
21 businesses, as indicated below. The government has also produced  
22 declarations from the respective custodians of records (or other  
23 qualified persons) from these companies. As detailed below, the  
24 custodian-of-record declarations for these records were also filed  
25 with the Court on December 6 and 11, 2018, and the underlying records  
26 were produced in discovery:  
27  
28

CR Docket Entry	Declarant/Organization /Dates	Description	Bates Numbers
275	Chelsea Clays/Google, Inc. January 10, 2017	yichishih@gmail.com search warrant response	891402-1396916
275	Evelyn Blackwell/Microsoft, Inc. February 21, 2017	yichishih@hotmail.com search warrant response	98927-276889
275	Mireille Delbecq/Yahoo, Inc. May 30, 2017	yichishih@yahoo.com search warrant response	276890-576502
275	Gurleen Virk/Google, Inc. October 17, 2017	ishiang.shih@gmail.com search warrant response	576504-694260
275	Mari Stosich-Wall/Microsoft, Inc. October 20, 2017	ishiang5860@hotmail.com search warrant response	694262-808273
275	Walter Rodriquez/ Google, Inc. January 17, 2018	push310@gmail.com search warrant response	87563-98926
275	Chelsea Clays/Google, Inc. February 15, 2018	yichishih@gmail.com supplemental search warrant response	1396917-1543560
279	A. Evans Anderson, /FedEx Corporation/ March 21, 2016, May 4, 2016, and July 10, 2017	FedEx records response.	37219-37428, 37444-37474
279	Betty J. Saylor / FedEx Corporation/October 11, 2017	FedEx records response.	37429 - 37443
279	Jamilah Freeman/United Parcel Service, Inc./October 11, 2017	UPS records response.	38045-38106
279	Janice Morrison/DHL Express USA/October 25, 2017	DHL records response.	36881-36899

CR Docket Entry	Declarant/Organization /Dates	Description	Bates Numbers
279	Lawrence Liang/MeiMei Global Inc./November 3, 2017	MeiMei Express records response.	37742- 37938
279	Stephanie A. Brown/Freeport Forwarding, Inc./October 19, 2017	Freeport Forwarding records response.	37492- 37551
279	David Bennett/iShip Inc./February 12, 2018	iShip Inc. records response.	1548695- 1548720

Certification under Rule 902(11) obviates the need for the government to authenticate business records at trial and permits the records to be admitted under Federal Rule of Evidence 803(6). See Fed. R. Evid. 902(11). Accordingly, in order to admit the above-referenced business records as exhibits at trial, the government should not need to call the custodians of records for these businesses to testify. Rather, these business records should be admissible based on the certifications above.

**B. Certified TECS Records**

On December 21, 2018, the government also provided defendant with written notice of its intent to introduce certified TECS records showing that Yi-Chi Shih and Ishiang Shih, among others, crossed various borders on specific dates during the conspiracy. (Ex. A.) TECS records are maintained by U.S. Customs and Border Protection, and the records are routinely generated by officers at the border to assist with screening travelers. These records are admissible under Fed. R. Evid. 803(8), and they were produced to defendant at bates numbers YC\_SHIH\_0001,2045-1,2093. See, e.g., United States v.

Orozco, 590 F.2d 789, 793 (9th Cir. 1979); United States. v. Cabrera-Beltran, 660 F.3d 742, 750-53 (4th Cir. 2011). Admitting these certified records without calling custodians or other witnesses familiar with the TECS operating systems will expedite the presentation of evidence, and defendant has not indicated that he has any objections to the admissibility of these records at trial.

**C. Certified U.S. Treasury Department/Financial Crimes Enforcement Network Records**

The government has also provided written notice to defendant of its intent to introduce certified U.S. Treasury Department/Financial Crimes Enforcement Network ("FinCEN") records related to reports of various bank accounts (or the lack thereof) in the names of Yi-Chi Shih, Sue Jane Shih, April Shih, and Alice Shih:

Bates Range	Description
YC_SHIH_5306	FinCen Certification of lack of record for Sue Jane Shih
YC_SHIH_5307	FinCen Certification of lack of record for April Shih
YC_SHIH_5308	FinCen Certification of lack of record for Alice Shih
YC_SHIH_5309-5313	Certified FBAR forms for Yi Chi Shih for the years 2011 and 2012
YC_SHIH_5314-5332	Certified FBAR transcripts of record for the years 2011 through 2016

These Treasury/FinCEN records are likewise self-authenticating documents and are admissible at trial under Federal Rules of Evidence 803(8) and 803(10). See, e.g., United States v. Ryan, 969 F.2d 238,

240 (7th Cir. 1992); United States v. Combs, 762 F.2d 1343, 1348 (9th  
Cir. 1985). Defendant has not notified the government of any  
objections to the introduction of these records at trial.

**D. Certified Visa Records from the U.S. Department of State**

In addition, the government has provided notice to defendant of  
its intent to introduce certified visa records from the U.S.  
Department of State related to Yaping Chen, Ye Yuan, Jieru Deng, and  
others. These records are admissible under Fed. R. Evid. 803(6) and  
803(8) and were produced to defendant at YC\_SHIH\_11,432-11,765. See,  
e.g., Ngamfon v. United States Department of Homeland Security, No.  
CV 17-183 DMG, 2018 WL 6040193, at \*2 n.1 (C.D. Cal. Oct. 17, 2018);  
see also Bridgeway Corp. v. Citibank, 201 F.3d 134, 142-44 (2d. Cir.  
2000); United States v. Chkuaseli, 732 Fed. Appx. 747, 758 (11th Cir.  
2018).

**E. Publications in the Federal Register**

The government has also notified defendant that it intends to  
introduce official copies of publications in the Federal Register,  
copies of which were produced to defendant at YC\_SHIH\_11,432-11,765.  
These are the publications of the placement of relevant entities on  
the Department of Commerce Entity List, and modifications of those  
placements. Publications in the Federal Register are admissible as  
public documents.

**III. CONCLUSION**

For the foregoing reasons, the government respectfully requests  
that the Court issue an order that the documents subject to this  
motion are self-authenticating, that "they require no extrinsic  
evidence of authenticity in order to be admitted," Fed. R. Evid. 902,  
and that they are otherwise admissible into evidence at trial. The



1 government seeks an order that it has satisfied the authenticity and  
2 foundational requirements for admission of these documents without  
3 calling document custodians and that the documents will be admitted  
4 at trial subject only to objections under Federal Rules of Evidence  
5 401 (relevance) and 403 (undue prejudice). Finally, the government  
6 reserves the right to provide further notice of other entities from  
7 which it intends to introduce business or government records under  
8 the Federal Rules of Evidence, and asks that the government be  
9 granted permission to supplement this motion if necessary prior to  
10 trial.

11 Dated: March 4, 2019

Respectfully submitted,

12 NICOLA T. HANNA  
13 United States Attorney

14 PATRICK R. FITZGERALD  
15 Assistant United States Attorney  
Chief, National Security Division

16 /s/  
17 JUDITH A. HEINZ  
18 JAMES C. HUGHES  
19 MELANIE SARTORIS  
WILLIAM M. ROLLINS  
KHALDOUN SHOBAKI  
Assistant United States Attorney

20 Attorneys for Plaintiff  
21 UNITED STATES OF AMERICA  
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# EXHIBIT A

**Rollins, William (USACAC)**

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**From:** Rollins, William (USACAC)  
**Sent:** Friday, December 21, 2018 11:14 AM  
**To:** 'John Hanusz'; Jim Spertus; Christa Culver  
**Cc:** Hughes, James (USACAC) 4; Sartoris, Melanie (USACAC); Shobaki, Khaldoun (USACAC); Heinz, Judith (USACAC)  
**Subject:** U.S. v. Shih (Notice re: Public Records)  
**Attachments:** Notice re introduction of certified public records\_12.21.2018.pdf

Please see the attached letter.

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December 21, 2018

#### **VIA E-MAIL**

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Re: United States v. Yi-Chi Shih, et al.  
Case No. CR18-00050(B)-JAK

Mr. Spertus and Mr. Hanusz:

By this letter, the government hereby informs you that it will seek to introduce the following public records at trial in this case:

1. Certified TECS records showing that Yi-Chi Shih and Ishiang Shih, among others, crossed U.S. borders on specific dates during the conspiracy. TECS records are maintained by U.S. Customs and Border Protection, and the records are routinely generated by officers at the border to assist with screening travelers. These records are admissible under Fed. R. Evid. 803(8), and they have been produced to you at YC\_SHIH\_0001,2045-1,2093. *See, e.g., United States v. Orozco*, 590 F.2d 789, 793 (9th Cir. 1979); *United States v. Cabrera-Beltran*, 660 F.3d 742, 750-53 (4th Cir. 2011).

2. Certified U.S. Treasury Department/Financial Crimes Enforcement Network ("FinCEN") records related to reports of various bank accounts (or the lack thereof) in the names of Yi-Chi Shih, Sue Jane Shih, April Shih, and Alice Shih:

Bates Range	Description
YC_SHIH_5306	FinCen Certification of lack of record for Sue Jane Shih

Defense Counsel for Defendant Yi-Chi Shih  
RE: United States v. Shih et al, CR 18-50(B)-JAK  
December 21, 2018  
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YC_SHIH_5307	FinCen Certification of lack of record for April Shih
YC_SHIH_5308	FinCen Certification of lack of record for Alice Shih
YC_SHIH_5309-5313	Certified FBAR forms for Yi Chi Shih for the years 2011 and 2012
YC_SHIH_5314-5332	Certified FBAR transcripts of record for the years 2011 through 2016

These Treasury/FinCEN records are likewise self-authenticating documents and are admissible at trial under Federal Rules of Evidence 803(8) and 803(10). *See, e.g., United States v. Ryan*, 969 F.2d 238, 240 (7th Cir. 1992); *United States v. Combs*, 762 F.2d 1343, 1348 (9th Cir. 1985).

3. Certified visa records from the U.S. Department of State related to Yaping Chen, Ye Yuan, Jieru Deng, and others. These records are admissible under Fed. R. Evid. 803(6) and 803(8), and were produced to you at YC\_SHIH\_11,432-11,765. *See, e.g., Ngamfon v. United States Department of Homeland Security*, No. CV 17-183 DMG, 2018 WL 6040193, at \*2 n.1 (C.D. Cal. Oct. 17, 2018); *see also Bridgeway Corp. v. Citibank*, 201 F.3d 134, 142-44 (2d. Cir. 2000); *United States v. Chkuaseli*, 732 Fed. Appx. 747, 758 (11th Cir. 2018).

4. Official copies of the rules and regulations published in the Federal Register that were previously produced to you at USAO\_SHIH\_1,575,376-1,575,434. *See* 44 U.S.C. § 1507; *United States v. Woods*, 335 F.3d 993, 1000 (9th Cir. 2003).

If you oppose admission of these public records on the evidentiary grounds articulated above, please provide notice so that the government may timely file a motion in limine to resolve the admissibility of this evidence.

Very truly yours,



William M. Rollins  
Assistant United States Attorney  
Terrorism and Export Crimes Section  
National Security Division